United States Court of Appeals
For the First Circuit

OCTOBER TERM, 1952.

ALICE D. JACOBSON, Admx.,

PLAINTIFF, APPELLANT,

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

DEFENDANT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS FROM JUDGMENT OF DISMISSAL (FORD, J.), JANUARY 19, 1953.

RECORD ON APPEAL.

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United States Court of Appeals
For the First Circuit

OCTOBER TERM, 1952.

ALICE D. JACOBSON, ADMX.,
PLAINTIFF, APPELLANT,
v.
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
DEFENDANT, APPELLEE.

RECORD ON APPEAL.

No. 52-303 Civil Action.

ALICE D. JACOBSON, ADMX.,
Plaintiff,
v.
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Defendant.

APPEAL OF ALICE D. JACOBSON, ADMX., AS PLAINTIFF, FROM JUDGMENT OF DISMISSAL (FORD, J.), ENTERED JANUARY 19, 1953.

COMPLAINT.

[Filed March 18, 1952.]

A. The Plaintiff is the Administratrix of the estate of Margaret B. Price late deceased of Melrose, Massachusetts,

said Administratrix being also of Melrose, Massachusetts, and the Defendant is a Connecticut corporation duly organized by law and having a usual place of business at New Haven, Connecticut. The matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars.

COUNT I. That on or about the second day of May, 1950, the Plaintiff's deceased, Margaret B. Price was a passenger of the Defendant en route from Lake Worth, Florida to Boston, Massachusetts, and while in the exercise of due care, she was caused to be thrown to the floor of one of the trains of the Defendant, due to the negligence of the Defendant, or those persons for whose conduct it was responsible.

As a result of being thrown to the floor of the train, the Plaintiff's intestate sustained injuries from which she died on the twenty-first day of May, 1950. And the Plaintiff says that an action has accrued to her as Administratrix for the pain and conscious suffering of the said late deceased, Margaret B. Price.

COUNT II. The Plaintiff says that on the second day of May, 1950, Margaret B. Price, of whose estate she is the duly appointed Administratrix, was a passenger on the railroad of the Defendant. That while riding in a car of the Defendant, she was severely and permanently injured due to the negligence of the Defendant in that its servants or agents so negligently and carelessly operated and controlled its railroad train so as to cause it to lurch and jolt throwing the Plaintiff's intestate to the floor, whereupon she sustained personal injuries which caused her to die on May 21, 1950. And the Plaintiff says that she brings this action to recover for the use of next of kin of said Margaret B. Price.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the sum of Fifty Thousand Dollars.

Trial by jury is hereby claimed by the Plaintiff.

By her attorney,

(s) GEORGE P. LORDAN,
20 Pemberton Square,
Boston 8, Massachusetts

DEFENDANT'S MOTION TO DISMISS.

[Filed April 24, 1952.]

The defendant admits that it is a corporation duly organized under the laws of the State of Connecticut, but says that it is also a corporation duly organized under the laws of the Commonwealth of Massachusetts, and by reason thereof is a domestic corporation within the Commonwealth of Massachusetts.

Wherefore, the defendant moves that this action be dismissed, because there is no diversity of citizenship between the plaintiff and the defendant corporation.

By its Attorney,

(s) NOEL W. DEERING.

May 5, 1952

Motion denied: reasons fully stated in *Gavin* v. *Hudson & Manhattan R. Co.*, 185 F.2d 104.

(s) F. J. W. F.,
D. J.

The foregoing motion to dismiss came before the Court (Ford, J.) for hearing on May 5, 1952 and was taken under advisement. The motion was denied on the same day, as endorsed thereon.

MOTION FOR COURT TO REVOKE ORDER ON DEFENDANT'S MOTION TO DISMISS AND TO ENTER AN ORDER DISMISSING THE CASE FOR LACK OF JURISDICTION.

[Filed August 8, 1952.]

The defendant says that before pleading the merits in this case the defendant filed a motion to dismiss based upon lack of jurisdiction because there was no diversity of citizenship between the parties; that the defendant's motion was denied on May 5, 1952, "for the reasons fully stated in *Gavin* v. *Hudson & Manhattan R. Co.*, 185 F.2d, 104"; that on or about the 20th day of June, 1952, the Court of Appeals for the first Circuit handed down an opinion in the case of *Seavey* v. *B. & M. R.R. Co.* (believed as yet to be unreported), in which the Court of Appeals expressly refused to follow *Gavin* v. *Hundson & Manhattan R. Co.*, in this Circuit; that the case of *Seavey* v. *B. & M. R.R. Co.*, appears to involve an identical situation as to diversity as that involved in the instant case.

Wherefore, the defendant moves that the Court revoke its order, denying defendant's motion to dismiss, and that it dismiss the present action for lack of diversity of citizenship.

By its Attorney,

(s) NOEL W. DEERING.

On September 16, 1952, defendant's motion for rehearing of its motion to dismiss came before the Court (Ford, J.). The motion was allowed, unless an amendment was filed supporting jurisdiction. Thereafter, the following amended complaint was filed:

AMENDED COMPLAINT.

[Filed September 30, 1952.]

A. The Plaintiff is the Administratrix of the Estate of Margaret B. Price, late deceased of Melrose, Massachusetts, said Administratrix being also of Melrose, Massachusetts, and the Defendant is a Connecticut corporation duly organized by law and having a usual place of business at New Haven, Connecticut. The matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars.

B. Jurisdiction herein in addition to diversity of citizenship is based on the existence of a question under the Federal Statutes known as the Safety Appliance Act Section 1 et seq. Title 45 U.S.C.A. hereinafter more fully appears.

C. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto railroad tracks, road bed, rails and ties and equipment within the various railroad cars and the Defendant so negligently and carelessly maintained and operated the brakes and braking equipment of said railroad train that as a result, the plaintiff's intestate, a passenger who was seated within one of the cars of said train was thrown out of her seat onto the floor of said car and sustained injuries from which she died. The Plaintiff says that she brings this action to recover for the use of next of kin of said Margaret B. Price.

D. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars and the Defendant so negligently and carelessly maintained and operated the brakes and braking

equipment of said railroad train that as a result the Plaintiff's intestate, a passenger who was seated within one of the cars of said train was thrown out of her seat onto the floor of said car and sustained injuries from which she died. The Plaintiff says that an action has accrued to her as Administratrix for the conscious pain and suffering of the said late deceased Margaret B. Price.

E. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars and the Defendant so negligently and carelessly maintained and operated the couplings on said cars that as a result the Plaintiff's intestate, a passenger who was seated within one of the cars of said train was thrown out of her seat on to the floor of said car and sustained injuries from which she died. The Plaintiff says that she brings this action to recover for the use of next of kin of said Margaret B. Price.

F. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars and the defendant so negligently and carelessly maintained and operated the couplings on said cars that as a result the Plaintiff's intestate, a passenger who was seated within one of the cars of said train was thrown out of her seat onto the floor of said car and sustained injuries from which she died. The Plaintiff says that an action has accrued to her as Administratrix for the conscious pain and suffering of the said late deceased Margaret B. Price.

G. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars and the Defendant so negligently and carelessly maintained the track and operated a train thereover, that said track was in a defective condition so that as a result thereof, the Plaintiff's intestate, who was a passenger in a car of said train was thrown to the floor and sustained injuries from which she died. The Plaintiff says that she brings this action to recover for the use of next of kin of said Margaret B. Price.

H. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars and the defendant so negligently and carelessly maintained the track and operated a train thereover, that said track was in a defective condition so that as a result thereof, the Plaintiff's intestate, who was a passenger in a car of said train was thrown to the floor and sustained injuries from which she died. The Plaintiff says that an action has accrued to her as Administratrix for the conscious pain and suffering of the said late deceased Margaret B. Price.

I. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars, to wit, a chair in which the Plaintiff's inte-

state, a passenger in said car was seated, and the Defendant so negligently and carelessly maintained said chair that as a result thereof, the Plaintiff's intestate was thrown to the floor and sustained injuries from which she died. The Plaintiff says that she brings this action to recover for the use of next of kin of said Margaret B. Price.

J. That on or about the 2nd day of May, 1950, the Defendant operated, maintained and controlled a railroad train consisting of an engine and cars running from Lake Worth to Boston and in addition thereto, railroad tracks, road bed, rails and ties and equipment within the various railroad cars, to wit, a chair in which the Plaintiff's intestate, a passenger in said car was seated, and the Defendant so negligently and carelessly maintained said chair that as a result thereof, the Plaintiff's intestate was thrown to the floor and sustained injuries from which she died. The Plaintiff says that an action has accrued to her as Administratrix for the conscious pain and suffering of the said late deceased Margaret B. Price.

K. That on or about the 2nd day of May, 1950, the Plaintiff's deceased, Margaret B. Price was a passenger of the Defendant en route from Lake Worth, Florida to Boston, Massachusetts, and while in the exercise of due care, she was caused to be thrown to the floor of one of the trains of the Defendant, due to the negligence of the Defendant, or those persons for whose conduct it was responsible.

As a result of being thrown to the floor of the train, the Plaintiff's intestate sustained injuries from which she died on the twenty-first day of May, 1950. And the Plaintiff says that an action has accrued to her as Administratrix for the pain and conscious suffering of the said late deceased, Margaret B. Price.

L. The Plaintiff says that on the 2nd day of May, 1950,

Margaret B. Price, of whose estate she is the duly appointed Administratrix, was a passenger on the railroad of the Defendant. That while riding in a car of the Defendant, she was severely and permanently injured due to the negligence of the Defendant in that its servants or agents so negligently and carelessly operated and controlled its railroad train so as to cause it to lurch and jolt throwing the Plaintiff's intestate to the floor, whereupon she sustained personal injuries which caused her to die on May 21, 1950. And the Plaintiff says that she brings this action to recover for the use of next of kin of said Margaret B. Price.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the sum of Fifty Thouand Dollars.

Trial by jury is hereby claimed by the Plaintiff.

By Her Attorney,

(s) GEORGE P. LORDAN, by H.E.T.

DEFENDANT'S MOTION TO DISMISS.

[Filed October 10, 1952.]

The defendant moves that this action be dismissed for the reason that in the absence of diversity of citizenship this Court lacks jurisdiction of the subject matter of this action as set forth in plaintiff's amended complaint.

By its Attorney,

(s) NOEL W. DEERING.

On January 5, 1953, the foregoing motion to dismiss came before the Court (Ford, J.). After hearing and arguments, the matter was taken under advisement.

JUDGMENT FOR DISMISSAL.

[Entered January 19, 1953.]

FORD, J. After hearing on defendant's motion to dismiss in the above entitled action, and in accordance with Memorandum of Decision handed down this day, it is ORDERED

Defendant's motion to dismiss allowed,

Action dismissed, with costs to defendant taxed at $.

By the Court,

(s) FRANCES R. FOLEY,
Deputy Clerk.

Jan. 19-'53.
FORD,
U. S. D. J.

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS.

[January 19, 1953.]

FORD, D.J.

This is an action to recover for the death of plaintiff's decedent, alleged to have resulted from injuries received when she was thrown from her seat onto the floor of a car in defendant's train in which she was traveling as a passenger from Lake Worth, Florida, to Boston. Defendant moves to dismiss for lack of jurisdiction.

There is no diversity of citizenship, and the sole question is whether the allegations in the complaint of violation by the defendant of the Safety Appliances Acts, 45 U.S.C.A., §§ 1, et seq., make the cause of action one arising under the laws of the United States, 28 U.S.C.A., § 1331.

To make a case one arising under the laws of the United States, the right sought to be enforced should be a federal

one. *Puerto Rico* v. *Russell & Co.*, 288 U.S. 476, 483. It is not enough that in an action to enforce a right arising under state law or statute, a question of federal law is involved. *Gully* v. *First National Bank in Meridian*, 299 U.S. 109, 115.

The Safety Appliances Acts make violation of their prohibitions unlawful, and provide a penalty for such violations, but they nowhere confer any right of action for injuries or death caused by such violations. *Urie* v. *Thompson*, 337 U.S. 163, 188. While the Acts thus prescribe a duty, the right to recover for injuries suffered through a breach of such duty springs either from the common law or, in the case of a death action, from the applicable statute. *Moore* v. *Chesapeake & Ohio Railway Co.*, 291 U.S. 205, 215. Thus, as the *Moore* case points out, an employee of a railroad suffering injury while employed in interstate commerce can rely on a violation of the Safety Appliances Acts in an action in a federal court under the Employers' Liability Acts, 45 U.S.C.A., §§ 51 *et seq.* But it is the latter Acts, and not the Safety Appliances Acts which create the right of action, and make the case one arising under the laws of the United States. Where the employee is injured in intrastate commerce the Employers' Liability Acts are no longer applicable, and while he may still rely on the breach of the duty imposed by the Safety Appliances Acts, his only right of action is that which is conferred by the applicable state statute or law. *Gilvary* v. *Cuyahoga Valley Railway Co.*, 292 U.S. 57, 61; *Tipton* v. *Atchison, Topeka and Santa Fe Railway Co.*, 78 F. (2d) 450.

It is true that the Safety Appliances Acts were intended for the protection of passengers as well as employees of the railroads. *Fairport, Painesville & Eastern Railroad Co.* v. *Meredith*, 292 U.S. 589, 594. But no federal statute confers any right of action for the death of a passenger resulting

from a violation of the Acts. Any right of plaintiff to recover arises under the applicable death statute of the appropriate state (the state in which injuries causing the death were sustained is not stated in the complaint), and the fact that plaintiff may be entitled in an action brought under such a statue to rely on the violation of the duty imposed by the Safety Appliances Acts does not make this a case arising under the laws of the United States. *Moore* v. *Chesapeake & Ohio Railway Co., supra,* at p. 214.

Defendant's motion to dismiss is allowed.

APPEAL TO COURT OF APPEALS UNDER RULE 73 (B).

[Filed February 11, 1953.]

Notice is hereby given that Alice D. Jacobson, Administratrix of the Estate of Margaret B. Price (plaintiff) above named hereby appeals to the United States Court of Appeals for the First Circuit from Judgment entered in this action on January 19, 1953.

CARDOZO, LORDAN, KATZ & TUCKER,
By (s) GEORGE P. LORDAN,
Plaintiff.

[MEMORANDUM: On February 11, 1953, the appellant filed a Bond for Costs in the sum of $250.00, with the New Amsterdam Casualty Co. as surety thereon.

JOHN A. CANAVAN, *Clerk.*]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

[Filed February 25, 1953.]

The Appellant, Alice Jacobson, Administratrix of the Estate of Margaret B. Price, hereby designates the following portions of the record to be contained in the record of appeal.

1. Amended Complaint.
2. Defendant's Motion to Dismiss the Amended Complaint.
3. Memorandum of Decision Allowing Motion to Dismiss.
4. Allowance of Motion to Dismiss.
5. Entry of Judgment for the Defendant.

ALICE JACOBSON, *Admx.*
Appellant.
By (s) GEORGE P. LORDAN, HET.
Attorney.

APPELLEE'S DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD.

[Filed March 4, 1953.]

The Appellee, New York, New Haven and Hartford Railroad Company, hereby designates the following additional portions of the record to be contained in the record of appeal:

(1) The Original Complaint.

(2) Defendant's First Motion to Dismiss.

(3) The Court's Order on Defendant's First Motion to Dismiss.

(4) Defendant's Motion for Court to Revoke Order on Defendant's Motion to Dismiss and to Enter an Order Dismissing the Case for lack of Jurisdiction.

(5) The Order of the Court on the Foregoing Motion.

By its Attorney,

(s) NOEL W. DEERING.

DESIGNATION OF ISSUES UNDER RULE 22(6) OF THE CIRCUIT COURT OF APPEALS.

[Filed March 6, 1953.]

The Appellant, Alice Jacobson, Administratrix, hereby designates the following issues:

1. Was there a diversity of citizenship so as to give the District Court jurisdiction of the cause of action as set forth in the Amended Complaint.

2. Does the Safety Appliance Act confer a right for actions for injuries and death caused by the violation thereof as set forth in this Bill of Complaint.

ALICE JACOBSON, *Administratrix, Appellant,*

By her Attorneys,

CARDOZO, LORDAN, KATZ & TUCKER,

By (s) GEORGE P. LORDAN.

[MEMORANDUM: Order of enlargement of time in the District Court for docketing case to and including April 22, 1953 is here omitted. JOHN A. CANAVAN, *Clerk.*]

CLERK'S CERTIFICATE.

I, John A. Canavan, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the foregoing is a true copy of the matter designated by the parties and constitutes the record on appeal in the cause entitled:

ALICE D. JACOBSON, ADMX.,
Plaintiff,

v.

NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY,
Defendant.

in said District Court determined.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Boston in said District, this 25th day of March, 1953.

[SEAL] JOHN A. CANAVAN, *Clerk.*

[fol. 16] UNTED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1952

No. 4726

ALICE D. JACOBSON, Admx., Plaintiff, Appellant,

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Defendant, Appellee

Appeal from the United States District Court for the District of Massachusetts

[109 F. Supp. 513]

Before MAGRUDER, Chief Judge, and WOODBURY and HARTIGAN, Circuit Judges

Herbert E. Tucker, Jr., with whom George P. Lordan and Cardozo, Lordan, Katz & Tucker were on brief, for appellant.

Noel W. Deering for appellee.

OPINION OF THE COURT—July 14, 1953

MAGRUDER, Chief Judge:

The original complaint in this case stated an action in tort for negligence. In an effort to base federal jurisdiction on diversity of citizenship, the pleader set forth that plaintiff sued as administratrix of the estate of Margaret B. Price; that both plaintiff and her intestate were of Melrose, Massachusetts; that defendant, New York, New Haven and [fol. 17] Hartford Railroad Company, was a Connecticut corporation. It was alleged that on May 2, 1950, Margaret B. Price was a passenger of defendant en route from Lake Worth, Florida, to Boston, Mass., and that during the journey she was, due to defendant's negligence, thrown to the floor by a lurch or jolt of the train, from which she received bodily injuries of which she died on May 21, 1950. Count 1 sought damages for conscious pain and suffering. Count 2 sought damages for wrongful death on behalf of

the next of kin. The complaint did not state where the accident occurred, but counsel for appellant informed us at the oral argument that it took place in Boston.

Defendant filed a motion to dismiss the complaint for lack of diversity of citizenship, setting forth that defendant "is also a corporation duly organized under the laws of the Commonwealth of Massachusetts, and by reason thereof is a domestic corporation within the Commonwealth of Massachusetts." This motion the district court allowed, on the authority of *Seavey* v. *Boston & Maine R. R. Co.*, 197 F. 2d 485 (C. A. 1st, 1952), with leave to plaintiff to file an amended complaint supporting federal jurisdiction.

Thereafter, plaintiff filed an amended complaint setting forth, in addition to the claim of diversity of citizenship, that jurisdiction "is based on the existence of a question under the Federal Statutes known as the Safety Appliance Act Section 1 et seq. Title 45 U. S. C. A. [as] hereinafter more fully appears." In support of that basis of jurisdiction, it was alleged that defendant so negligently and carelessly maintained and operated the brakes and couplings that as a result intestate was thrown out of her seat and received the injuries of which she died.

The district court granted a motion of defendant to dismiss the amended complaint for lack of jurisdiction of the subject matter of the action. Its memorandum of decision [fol. 18] is reported in 109 F. Supp. 513. Plaintiff has appealed from the ensuing judgment of dismissal.

Appellant's main point is that the complaint properly invoked the jurisdiction of the district court under 28 U. S. C. § 1332 on the ground of diversity of citizenship, and that we ought to overrule our holding just a year ago in *Seavey* v. *Boston & Maine R. R. Co., supra.* Our decision in that case was carefully considered, and we adhere to it. In the present case a citizen of Massachusetts is suing a corporation incorporated under the laws of Massachusetts on an alleged tort occurring in Massachusetts and governed in its substantive aspects by the local law of Massachusetts. Bearing in mind the underlying purpose of the diversity of citizenship clause in Art. III of the Constitution, we see no reason why we should strain to pull this case in the United States District Court for the District of Massachusetts merely because the defendant corporation is also incorpo-

rated under the laws of Connecticut. In the *Seavey* case, we recognized that our view was not in harmony with that taken in *Gavin* v. *Hudson & Manhattan R. R. Co.*, 185 F. 2d 104 (C. A. 3d, 1950); but as Judge Goodrich has recently remarked, in another connection, in *McCoy* v. *Siler* (C. A. 3d, June 10, 1953): "The only policy consideration which is apparent is that we should not be astute to widen federal diversity jurisdiction."

Also, we think the district court was right in its conclusion that the subject matter of the cause of action stated in plaintiff's amended complaint, invoking the Safety Appliance Acts (45 U. S. C. § 1 *et seq.*) was not within the jurisdiction of the court under 28 U. S. C. § 1331.

By way of enforcement of the duties imposed by the Safety Appliance Acts, Congress merely imposed a small statutory penalty, to be recovered in a suit brought by the United States; in terms, at least, the Safety Appliance Acts [fol. 19] confer no right of action for damages in favor of any individual suffering personal injuries as a result of violation of the various safety provisions.

But the federal Employers' Liability Acts (45 U. S. C. § 51 *et seq.*) do grant a federal statutory right of action to railroad employees suffering injury while employed in interstate commerce, as defined, and in the case of the death of such employee to his personal representative for the benefit of his next of kin, for such injury or death resulting in whole or in part from the negligence of the carrier, "or by reason of any defect or insufficiency, due to its negligence," in its cars, appliances or other equipment. And it is settled that the federal Safety Appliance Acts and the Employers' Liability Acts are *in pari materia;* and when a railroad employee is entitled to sue under the Employers' Liability Acts he may recover without other proof of fault than a violation of a so-called "absolute duty" imposed by the Safety Appliance Acts. As stated in *San Antonio etc. Ry. Co.* v. *Wagner*, 241 U. S. 476, 484 (1916): "But the two statutes are *in pari materia*, and where the Employers' Liability Act refers to 'any defect or insufficiency, *due to its negligence*, in its cars, engines, appliances,' etc., it clearly is the legislative intent to treat a violation of the Safety Appliance Act as 'negligence'—what is sometimes called negligence *per se.*" To the same effect see *Moore* v. *Chesa-*

peake & Ohio Ry. Co., 291 U. S. 205, 210 (1934); *Brady* v. *Terminal R. R. Assn.*, 303 U. S. 10, 15 (1938); *O'Donnell* v. *Elgin, Joliet & Eastern Ry. Co.*, 338 U. S. 384, 390 (1949); *Carter* v. *Atlanta etc. Ry. Co.*, 338 U. S. 430, 434 (1949). The cause of action in a suit under the Employers' Liability Acts is a federal one, governed in its entirety by acts of Congress or by federal decisional law—in other words, by the provisions of the federal statutes so far as applicable, fitted into the common law background with respect to concepts of [fol. 20] negligence, contributory negligence, last clear chance, assumption of risk, proximate cause, etc., as the federal common law doctrines in such particulars are determined and declared by decisions of the federal courts. See *Chesapeake & Ohio Ry. Co.* v. *Kuhn*, 284 U. S. 44, 46-47 (1931); *Bailey* v. *Central Vt. Ry., Inc.*, 319 U. S. 350, 352 (1943); *Dice* v. *Akron, C. & Y. R. R. Co.*, 342 U. S. 359 (1952).

It is true, as the Supreme Court has many times pointed out, that the classes of persons for whose protection the Safety Appliance Acts were passed include more than railroad employees, engaged in interstate commerce, as defined, who are given federal statutory rights of action by the Employers' Liability Acts. This is evident in the original act of March 2, 1893, which was entitled an act "to promote the safety of employees and travelers upon railroads . . . " (27 Stat. 531). Compliance with the statutory safeguards, in addition to protecting employees engaged in interstate commerce, would also tend in many cases to contribute to the personal safety of intrastate employees. See *Gilvary* v. *Cuyahoga Valley Ry. Co.*, 292 U. S. 57 (1934). Compliance with the acts would also tend to protect passengers, such as the plaintiff's intestate in the case at bar. See *Fairport etc. R. R. Co.* v. *Meredith*, 292 U. S. 589, 594 (1934). In the latter case it was further held (at p. 595) that the title of the act need not necessarily be taken as indicating the complete legislative purpose; and that the installation and use of power brakes, as required by the Safety Appliance Acts, "so obviously contribute to the safety of the traveler at crossings that it is hardly probable that Congress could have contemplated their inapplicability to that situation."

When Congress in the Safety Appliance Acts imposed only penal sanctions for the observance of statutory safeguards

[fol. 21] enacted broadly for the protection of railway employees, passengers, and even travelers at crossings, and in a related act (the Employers' Liability Acts) created a private right of action only in employees engaged in interstate commerce, as defined, fairly obviously it cannot be maintained as a matter of statutory interpretation that Congress has also created a statutory right of action in favor of intrastate railway employees, or passengers, or travelers at crossings, injured as a result of violation by the railroad of the Safety Appliance Acts. "Where there is only a criminal penalty, and no mention of any civil remedy, many courts have read into the statute a supposed or 'presumed' intent to provide one. In the ordinary case this is pure fiction, since the obvious conclusion is that the legislature either did not have the civil action in mind at all, or deliberately omitted to provide for it." Prosser on Torts (1941) 265. This was squarely recognized in *Gilvary* v. *Cuyahoga Valley Ry. Co.*, 292 U. S. 57 (1934). Furthermore, the Court there commented (at p. 61) that if Congress had had the purpose of creating a right of action in favor of persons not covered by the Employers' Liability Acts, "Congress probably would have included provisions in respect of venue, jurisdiction of courts, limitations, measure of damages, and beneficiaries in case of death."

But though Congress has not created a statutory right of action in favor of passengers injured as a result of violation of the Safety Appliance Acts, it is still possible for the courts to do so on principles of the common law. The breach of a penal statute may be regarded by the courts as a relevant operative fact upon the basis of which may be predicated a common law tort liability to a person injured as a result of the breach, provided he is within the class for whose protection the penal statute presumably was passed. The courts of the various states differ extensively in their [fol. 22] formulation and application of the common law principle upon which a liability is created in favor of a person injured by breach of a criminal statute. Some courts speak of the breach as "negligence *per se*", others as "evidence of negligence" or as "prima facie evidence of negligence." Nor are they completely in agreement as to what is meant by these phrases. Furthermore, liability in such cases is fitted into whatever local variations there may be in

common law doctrines as to contributory negligence, last clear chance, assumption of risk, proximate cause, etc.

The common law principle referred to in the previous paragraph was broadly stated in the leading case of *Texas & Pac. Ry. Co.* v. *Rigsby*, 241 U. S. 33, 39 (1916), as follows: "A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law. . . ." If the federal courts had undertaken to apply this principle as a matter of federal decisional law, in the case of a breach of the Safety Appliance Acts resulting in personal injury to a person not entitled to sue under the Employers' Liability Acts, and if such liability had been imposed as a matter of federal common law without reference to local variation of statutory law or of common law doctrine applicable in the state where the injury occurred, it would perhaps follow that a complaint setting up such a liability would be a civil action arising "under the Constitution, laws or treaties of the United States" within the meaning of 28 U. S. C. § 1331. See *Reitmeister* v. *Reitmeister*, 162 F. 2d 691 (C. A. 2d, 1947); *Mater* v. *Holley*, 200 F. 2d 123 (C. A. 5th, 1952). Cf. *Odell* v. *Humble Oil & Ref. Co.*, 201 F. 2d 123 (C. A. 10th, 1953); *Doucette* v. *Vincent*, 194 F. 2d 834, 839 *et seq.* (C. A. [fol. 23] 1st, 1952). See also *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, 71-73 (1938).

But it is abundantly clear that the federal courts have not, as a matter of federal common law, developed a private right of action for damages for personal injuries resulting from a breach of the Safety Appliance Acts, in favor of persons not entitled to sue under the provisions of the Employers' Liability Acts. This is apparent from examination of the following cases, among others: *Minneapolis, St. Paul etc. Ry. Co.* v. *Popplar* 237 U. S. 369 (1915); *Moore* v. *Chesapeake & Ohio Ry. Co.* 291 U. S. 205 (1934); *Gilvary* v. *Cuyahoga Valley Ry. Co.*, 292 U. S. 57 (1934); *Fairport etc. R. R. Co.* v. *Meredith*, 292 U. S. 589 (1934); *Tipton* v. *Atchison, T. & S. F. Ry. Co.*, 298 U. S. 141 (1936); *Breisch* v. *Central R. R. of New Jersey*, 312 U. S. 484 (1941); *Andersen* v. *Bingham & G. Ry. Co.*, 169 F. 2d 328 (C. A. 10th, 1948).

It follows, therefore, that if an action is brought in a state court by a passenger or other person not entitled to sue under the Employers' Liability Acts to recover damages for personal injury resulting from a violation of the Safety Appliance Acts, issues bearing upon the right to recover, relating, for example, to common law doctrines of last clear chance, the defense of contributory negligence, or proximate cause, depend upon the local law of the state where the injury occurred, and do not present federal questions reviewable by the Supreme Court under 28 U. S. C. § 1257(3). See *Minneapolis, St. Paul etc. Ry. Co.* v. *Popplar, supra; Fairport etc. R. R. Co.* v. *Meredith, supra* at 597-98. However, questions arising in such state court actions "relating to the scope or construction of the Federal Safety Appliance Acts are, of course, federal questions which may appropriately be reviewed" by the Supreme Court on certiorari. *Moore* v. *Chesapeake & Ohio Ry. Co., supra* at 214. [fol. 24] This is well settled, whatever may be the theoretical difficulties presented. See 66 Harv. L. Rev. 1499 *et seq.* (1953).

It follows also, that if such an action is brought in or removed to a federal district court on grounds of diversity of citizenship, the substantive law to be applied, in determining the right to recover, is the statutory or common law of the state. *Tipton* v. *Atchison, T. & S. F. Ry. Co., supra; Breisch* v. *Central R. R. of New Jersey, supra.* And if there is no applicable state statute, the federal courts, since *Erie R. R. Co.* v. *Tompkins,* 304 U. S. 64 (1938), must apply the state common law as declared in the state courts.

Furthermore, it follows that where there is no diversity of citizenship such an action cannot be maintained in a federal district court, since the liability for damages and the corresponding private right of action, if any, are created by state law. *Tipton* v. *Atchison, T. & S. F. Ry. Co., supra; Andersen* v. *Bingham & G. Ry. Co., supra; Moore* v. *Chesapeake & Ohio Ry. Co., supra.* Perhaps some of the language in *Texas & Pacific Ry. Co.* v. *Rigsby,* 241 U. S. 33 (1916), is susceptible of misunderstanding. There, an action in a state court by an intrastate employee was removed to a federal district court, though so far as appears there was no claim of diversity of citizenship. However, Chief Justice Hughes was careful to point out in *Moore* v. *Chesapeake & Ohio Ry.*

Co., supra, in the footnote at p. 215, that in the *Rigsby* case the action "was removed to the federal court upon the ground that defendant was a federal corporation." See *Texas & Pac. Ry. Co.* v. *Kirk,* 115 U. S. 2, 11 (1885).

Of course there would be nothing incongruous if a state, as part of its local common law of torts, should impose a liability in favor of an intrastate employee, or of a passenger, suffering injuries within the state as a result of a breach by the railroad of a penal law enacted by Congress in part [fol. 25] for the protection of such persons. The federal Safety Appliance Acts, under the supremacy clause, are part of the law of the land, fully applicable within the borders of the state; and the state courts, in formulating their local rules of tort liability, might well give the same significance to a breach of a penal act of Congress that they would give to a breach of a similar act of their state legislature. But the point is that the extent and conditions of any such liability would be a matter of local law. And it is well settled that in the case of intrastate employees injured as a result of a breach of the federal Safety Appliance Acts, the state legislatures have constitutional power to abolish altogether any common law right of action for damages, and to substitute an exclusive remedy under the state workmen's compensation act. *Gilvary* v. *Cuyahoga Valley Ry. Co., supra; Tipton* v. *Atchison, T. & S. F. Ry. Co., supra; Breisch* v. *Central R. R. of New Jersey, supra.* This the state legislatures would have no power to do if the injured intrastate employee had a paramount right of action for damages created either by the federal Safety Appliance Acts or by federal decisional law treating the breach of the penal statute as one of the operative facts.

It is also worth noting that in the case at bar, according to the allegations in the complaint, plaintiff's intestate died as a result of the injuries received. The complaint sought recovery by the administratrix (1) for the benefit of the next of kin on account of the wrongful death, and (2) for the benefit of the estate on account of conscious pain and suffering prior to death. As to the count for death, there is certainly no applicable federal wrongful death act giving such a right of action for the death of a passenger. The wrongful death provision of the federal Employers' Liability Act (45 U. S. C. § 51) is inapplicable. Recovery on

this count would obviously have to be based on the Massa-[fol. 26] chusetts wrongful death act, C. 229, Mass. G. L. (Ter. ed.), as amended. As to the count for conscious pain and suffering, it has from ancient times been the settled common law rule that tort actions did not survive the death of either the plaintiff or the defendant. See Prosser on Torts (1941) § 103. The survival provision of the federal Employers' Liability Act (45 U. S. C. § 59) is of course inapplicable to passengers. Any recovery, therefore, by the administratrix for the intestate's conscious pain and suffering accruing prior to death as a result of the tort, could be sustained, if at all, only under the provisions for survival of actions in C. 228, Mass. G. L. (Ter. ed.) This all goes to reinforce our conclusion that the subject matter of the cause of action stated in the amended complaint was not within the jurisdiction of the court below under 28 U. S. C. § 1331. It was not a civil action arising "under the Constitution, laws or treaties of the United States."

The judgment of the District Court is affirmed.

[fol. 27] PROCEEDINGS IN COURT OF APPEALS

On the same day, July 14, 1953, the following judgment was entered:

JUDGMENT—July 14, 1953

This cause came on to be heard on the record on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court: (S.) Roger A. Stinchfield, Clerk.

Thereafter, to wit, on July 29, 1953, mandate was stayed until further order of Court.

[fol. 28] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 29] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 404

ALICE D. JACOBSON, Administratrix, Petitioner,

vs.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

ORDER ALLOWING CERTIORARI—Filed November 30, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted limited to question No. 1, presented by the petition for the writ which reads as follows:

"Was there diversity of citizenship even though the defendant (a multiple corporation) was also incorporated in Massachusetts, which would confer jurisdiction upon the United States District Court for the District of Massachusetts?"

The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1953)

3

OCT 9 1953
HAROLD B. WILLEY, Clerk

Supreme Court of the United States.

No. 404 October Term, 1953.

ALICE D. JACOBSON, ADMX.,
Petitioner,

v.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Respondent.

ON JURISDICTION OF THE DISTRICT COURT.

PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

GEORGE P. LORDAN,
Attorney for Petitioner.

Herbert E. Tucker, Jr.,
Michael Carchia,
Cardozo, Lordan, Katz & Tucker,
Of Counsel.

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Supreme Court of the United States.

No. October Term, 1953.

ALICE D. JACOBSON, Admx.
Petitioner,

v.

NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
Respondent.

ON JURISDICTION OF THE DISTRICT COURT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, AND SUPPORTING BRIEF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, by George P. Lordan, her attorney, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit rendered July 14, 1953. The judgment affirms the judg-

ment of the United States District Court, District of Massachusetts, which allowed the defendant's motion for dismissal for lack of jurisdiction.

Jurisdiction.

The basis of jurisdiction is diversity of citizenship and violation of the Safety Appliance Acts 45 U.S.C.A. Sec. 1-4 and seq. by the defendant.

Summary Statement of Matters Involved.

This is an action to recover for the death and conscious suffering of the plaintiff's decedent, alleged to have resulted from injuries received while travelling as a passenger in the train of the defendant from Lake Worth, Florida to Boston.

The original complaint and the amended complaint both alleged diversity of citizenship. The plaintiff being described as of Massachusetts and the defendant corporation as of Connecticut. The defendant filed a motion to dismiss the complaint for lack of diversity of citizenship setting forth that the defendant is also a corporation duly organized under the laws of Massachusetts and by reason thereof there is no diversity of citizenship. This motion was denied, after hearing, upon the authority of *Gavin* v. *Hudson and Manhattan R.R. Co.*, 185 Federal (2) 104.

On August 8, 1952, the defendant filed a motion to revoke the order of the Court on the earlier motion to dismiss. This motion, the District Court allowed upon the authority of *Seavey* v. *Boston and Maine R.R. Co.*, 197 Fed (2nd) 485 (C.A. 1st 1952) with leave to the plaintiff to file an amended complaint supporting federal jurisdiction.

The plaintiff then filed an amended complaint containing

the same allegations as to diversity of citizenship and in addition thereto, various violations of the Safety Appliance Act and stated that jurisdiction is based upon the diversity of citizenship and the existence of a question under the Safety Appliance Act.

The District Court thereafter allowed a motion to dismiss for lack of jurisdiction and a subsequent judgment of dismissal. The plaintiff thereafter appealed to the United States Court of Appeals for the First Circuit which affirmed, and she now seeks to have the judgment reviewed.

Questions Presented.

1. Was there diversity of citizenship even though the defendant (a multiple corporation) was also incorporated in Massachusetts, which would confer jurisdiction upon the United States District Court for the District of Massachusetts?

2. Is the decision of *Seavey* v. *Boston and Maine R.R. Co.*, 197 Federal (2nd) 485 (C.A. 1st 1952) in conflict with the earlier decision of *Gavin* v. *Hudson and Manhattan R.R. Co.*, 185 Fed. (2nd) 104 (C.A. 3rd 1950)? If so should this conflict be resolved?

3. Was there jurisdiction under the Safety Appliance Act in the United States District Court for the District of Massachusetts to hear this complaint?

The Reasons Advanced for the Allowance of the Writ.

1. The concept of corporate citizenship is a judicial fiction which has been criticized severely. By force of logic, corporate citizenship, like the citizenship of a natural person, should be restricted so that the corporation can

be the citizen of only one state and only one country. It, therefore, by reason of multiple incorporation, cannot become a citizen in each state in which it becomes incorporated, because then it would have privileges far greater than a natural person who is limited to one citizenship. Its citizenship therefore should be confined to the state of origin of said corporation, in this case the State of Connecticut.

2. The reasoning in the case of *Gavin* v. *Hudson and Manhattan R.R. Co.*, 185 Fed. (2nd) 104 (C.A. 3rd 1950) is much sounder than in the Seavey case, and it should be adopted. The doctrine of the Seavey case makes jurisdiction a matter of having the necessary transportation fare.

3. The violation of the Safety Appliance Act without more does give jurisdiction to the United States District Court for the District of Massachusetts of a cause of action showing injuries as a result of said violation.

BRIEF IN SUPPORT OF PETITION.

POINT I.

There was diversity of citizenship sufficient to give the Federal District Court for Massachusetts jurisdiction to hear the complaint.

The complainant in this case is a citizen of Massachusetts. The defendant is a railroad incorporated first in Connecticut and thereafter in Massachusetts. The District Court for Massachusetts declined jurisdiction.

A corporation being a legal entity has citizenship only by a judicial fiction. It has been determined by this Honorable Court that citizenship of a corporation was that of the state originally creating or chartering it.

St. Louis v. *James* 161 U.S. 545 16 Supreme Court Reporter 621.

In this case, the state of original charter is Connecticut. Public Acts of Connecticut Vol 1866-1871 Page 713 Chapter CXXIX Acts of 1871. The railroad was organized as a corporation under Massachusetts Special Acts of 1872, Chapter 171.

The learned District Judge in declining jurisdiction stated that there was no diversity of citizenship (Record on Appeal Page 10). This in effect made the defendant railroad a citizen in both states. Not only is this result opposed to the case of *St. Louis* v. *James*, supra, but it is also extending the legal fiction of citizenship far beyond common sense.

To allow a multi-state corporation to be a citizen in each of the states where it is incorporated is to give this artificial being benefits which a natural person cannot claim. As a natural person can have only one citizenship, why should this legal being created by the mind or minds have more citizenship than its creators.

It is suggested that there was diversity of citizenship sufficient to give the United States District Court for the District of Massachusetts jurisdiction.

POINT II.

The reasoning in the case *Gavin* v. *Hudson and Manhattan R.R. Co.*, 185 Fed. (2nd) 104 (C.A. 3rd 1950) is much sounder than that of the case of *Seavey* v. *Boston and Maine R.R. Co.*, 197 Fed. (2nd) 485 (C.A. 1st 1952).

The Seavey case is based upon the reasoning of the United States Court of Appeals for the First Circuit as expressed in the doctrine viz:

> "A corporation incorporated in several states including the one in which a suit is brought against it,

must be regarded as a citizen of the latter state for the purpose of determining the jurisdiction of the Federal Court".

Goodwin v. *N.Y. N.H. & H. R.R.*, 124 Federal 358.
Lake Shore & M.S. Ry. v. *Eder*, 174 Fed. 944.
Geoffrey v. *N.Y. N.H. & H. R.R.*, 16 Fed. (2nd) 1017.
Peterborough R.R. v. *Boston and Maine R.R.*, 239 Fed. (2nd) 97.

But a citizen of Massachusetts can sue the defendant railroad in the State of Connecticut.

Boston and Maine R.R. v. *Breslin* 80 Fed. (2nd) 949 certiorari denied 297 U.S. 715 56 Supreme Court Reporter 590.

This type of reasoning is consistent with the principle previously enunciated regarding "a corporation as a citizen of the state in which suit is brought for the purpose of Federal Jurisdiction. Its net result is to make jurisdiction a matter of having the necessary transportation fare. As stated in the Gavin case, "Such a rule if adopted, may be an effective means of promoting additional passenger business but it would be pretty hard to explain to the layman".

It is suggested that the reasoning of the Circuit Court of Appeals in the Gavin case (Third Circuit) states the problem fairly.

"Thus assuming, of course, that the jurisdictional amount is involved, a citizen of State X can sue a corporation organized under the laws of State Y in the United States District Court for the district of Y

even though the corporate defendant is organized under the laws of State X."

In view of the line of cases so holding, the Court in the *Gavin* case found it incongruous to hold that a citizen of State Y could not sue the corporate defendant also organized in State X in the Federal District Court for the District of X.

Seavey v. *Boston and Maine R.R. supra.*

There is another reason why the Federal District Court for Massachusetts should take jurisdiction where the plaintiff is from Massachusetts. Would not the Jurors from the District of Massachusetts better understand her cause than those from Connecticut? Would they not be in a better position to assess damages than the jurors from Connecticut? Why should the plaintiff be compelled, in order to get into the Federal District Court, to go into another district and among strangers?

There has been no decision on this point from the Supreme Court of the United States. The question can be argued from both sides. The decisions which seem to favor jurisdiction in the Federal Court are:

Southern R.R. v. *Allison* 190 U.S. 326
Nashua & Lowell R.R. v. *Boston & Lowell R.R.* 136 U.S. 356
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Louisville N.A. & C. R. Co. v. *Louisville Trust Co.*, 174 U.S. 552

Those against jurisdiction are:

Chicago etc. R. Co. v. *Whitton* 13 Wall 283
Memphis & C. R. Co. v. *State of Alabama*, 107 U.S. 581
Patch v. *Wabash R.R.* 207 U.S. 277

Starke v. *New York Chicago & St. Louis* 180 Fed. (2nd) 569

It is submitted however that the concept of citizenship as based upon the diversity clause and applied to corporations is now outmoded and no longer has any basis in logic or reality. The multi-state corporation whether it becomes one by merger, by filing of its charter or voluntary application is still essentially the same railroad. It would appear as suggested in the Gavin case that the rule declining jurisdiction should be re-examined.

In addition to the reasons already advance we would cite the rule cited in the Restatement 203-207 to wit:

Suits may be brought by and against multiple corporations in any of the incorporating states.

We suggest to this Honorable Court that this is the better rule and that it was error for the learned District Court Judge to allow the motion to dismiss and the judgment should be reversed.

POINT III.

The violation of the Safety Appliance Act without more does give jurisdiction to the United States for the district of Massachusetts of a cause of action showing injuries as a result of said violation.

In a perusal of the cases cited by the District Judge in his memorandum of decision covered the cases brought by employees against various railroads, it is to be noted that there is no United States Supreme Court decision in this matter, wherein a passenger who is injured brought suit under the Safety Appliance Acts in the Federal Court. The proposition therefore is a new one.

The one case which is the closest to this proposition is

that of *Fairport P & E R.R. Co.* v. *Meredith*, 292 U.S. 589, wherein the respondent Meredith recovered judgment against the petitioner as a result of a collision between an automobile she was driving and a train of the petitioner at a railroad-highway crossing. It was there held that the Safety Appliance Act did apply and that the purpose of the Act was to protect. In addition to employees and passengers, it applied to travellers and this being so there is a Federal question which is reviewable by the United States Supreme Court; See *Puerto Rico* v. *Russell*, 288 United States 476 and *Moore* v. *Chesapeake & Ohio R.R. Co.*, 291 United States 215. To deprive the Federal District Court of civil jurisdiction of a violation of this Act seems to be illogical.

It is true that the Act does not set forth what rights accrue thereunder, the persons who are to benefit from it and wherein one may obtain jurisdiction and venue, but this lack of provision does not in our judgment deprive the District Court of jurisdiction of this complaint. The Federal Courts are not solely courts of statutory authority in the sense that they entertain only causes of action or rights credited by Federal Statute. The Federal Court is also a common law court and what better place is there to interpret a Federal Question than in the Federal Court. To continue to refuse jurisdiction as set forth in the memorandum of decision on the defendant's motion to dismiss; (See record 10, 11 and 12) would be to compel a litigant to go to the state courts for relief in a case involving a violation of the Safety Appliance Act. This result, in our judgment, was never intended by Congress.

CONCLUSION.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

GEORGE P. LORDAN,
Attorney for Petitioner.

HERBERT E. TUCKER, JR.,
MICHAEL CARCHIA,
CARDOZO, LORDAN, KATZ & TUCKER,
of Counsel.

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